

May 2, 2012
OPINION 11-0153

Ms. Lois Richard
Secretary, Crowley Fire and Police
Civil Service Board
P.O. Box 88
Crowley, LA 70527

71-1-1 MUNICIPAL FIRE 7 POLICE CIVIL SERVICE

La. R.S. 33:2494.

The state municipal fire and police civil service law does not allow the local fire and police civil service board to make a provisional appointee's examination score retroactive to the date it could have been approved, where an employee is provisionally appointed by the appointing authority without the board's certification of an employee as eligible for appointment.

Dear Ms. Richard:

Your question to this office concerns whether or not the Crowley Fire and Police Civil Service Board may retroactively certify as eligible for appointment those employees who are appointed provisionally where the employee's score on the promotional examination was not certified by the fire and police civil service board prior to the appointment. Factually, you advise that for whatever reason, several times an employee's examination score was not presented to the Board for approval, meaning the Board never certified that particular employee as eligible for appointment, but the appointing authority nonetheless made the appointment. You state the employee suffers the consequence of having his time served during the provisional appointment become invalid, for the reason that the appointment was not made after the Board had properly certified the employee as eligible for appointment.

You also state that the Office of the State Examiner, Municipal Fire and Police Civil Service, has advised you that fire and police civil service law does not allow the board to make the score retroactive to the date it could have been approved. You ask this office to advise whether the State Examiner's assessment is a valid interpretation of state law. For the following reasons, we agree with the State Examiner's assessment of the fire and police civil service law.

We first point out that under La. R.S. 33:2494, any appointment to a vacancy in the classified service, except those filled by demotion, transfer, emergency appointment, or substitute appointment not to exceed thirty days, must occur in their proper order:

1. The appointing authority must request the civil service board to certify a list of names of persons eligible for appointment to the vacant position. See La. R.S. 33:2494(A).

2. The board “shall thereupon” certify in writing the names of eligible persons from the appropriate employment list. *Id.*

3. The appointing authority shall then make the appointment in accordance with further provisions of La. R.S. 33:2494, considering first those persons eligible for reinstatement or reemployment (La. R.S. 33:2494(B)) and then those eligible for appointment to the vacant position as ranked by the board according to seniority (La. R.S. 33:2494(C)) or from the competitive list provided by the board (La. R.S. 33:2494(D)) if no current eligible employees accept a transfer to the vacant position.

4. Finally, in accordance with La. R.S. 33:2503, the appointing authority shall report within fifteen days following any appointment or employment in a position in the classified service, unless otherwise provided, the name of the appointee, the title and character of his office or employment and date the employee commenced work in a position. See La. R.S. 33:2494(F).

It is the opinion of this office that a provisional appointment of an employee to a position cannot be made without the appointee first being properly certified by the civil service board. Certification of eligibility is the acknowledgment by the civil service board prior to the provisional appointment, that the candidate has satisfied its qualification requirements for admission to the test, and achieved a passing score. Certification cannot be made retroactively; rather, it is contrary to civil service law to provisionally appoint a person and to then confirm that employee to a permanent position, and to determine, after-the-fact, his or her eligibility, in effect by passing the civil service appointment process outlined above.

We hope the foregoing is helpful to you. Should you have other questions with which we may provide assistance, please contact this office.

Very truly yours,

JAMES D. “BUDDY” CALDWELL
ATTORNEY GENERAL

BY:

KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

SYLLABUS

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Date Received:

Date Released: May 2, 2012

KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL